

REMARKS/ARGUMENTS

Claims 2-9, 12-26, and 28-30 are currently pending in the application. Claims 2-9, 12-26, and 28-30 were rejected in the Office Action mailed July 22, 2010 (hereinafter referred to as "Office Action").

This amendment is being submitted with a petition for a three month extension of time to extend the due date from October 22, 2010 to January 22, 2011. Applicant respectfully submits that this response is timely filed on Monday, January 24, 2010 since the extended due date fell on Saturday, January 22, 2010. A credit card authorization for the required fees is being submitted herewith. The Commissioner is hereby authorized to charge any additional fees, or credit any refunds, to Chalker Flores, LLP's Deposit Account No. 50-4863.

In view of the following remarks and amendments, applicant respectfully requests a timely Notice of Allowance be issued in this case.

Claim Rejections under 35 U.S.C. § 102

Claims 24, 3-6, 9, 13, 17-19, 25-26, 28-30 were rejected under 35 U.S.C. § 102(e) as being anticipated by Parker (U.S. Publication No. 2002/0184052). For anticipation, a single reference ***must identically disclose every element*** of the claimed invention. *Corning Glass Works v. Sumitomo Electric*, 9 USPQ 2d 1962, 1965 (Fed. Cir. 1989). A reference that excludes a claimed element, no matter how insubstantial or obvious, is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). Applicant respectfully submits that claims 24, 3-6, 9, 13, 17-19, 25-26, 28-30 are not anticipated by Parker and are, therefore, allowable under 35 U.S.C. § 102(e) for the reasons stated below.

Claims 24-26 and 28-30

Applicant respectfully submits that claims 24-26 and 28-30 are allowable under 35 U.S.C. § 102(e) because Parker does not identically disclose all of the element recited in claims 24-26 and 28-30 for at least the following reasons.

1. Multi-level marketing.

The Office Action indicated that Parker teaches the members "participate via incentives within a member multi-level marketing network, wherein one of the incentives includes paying a portion of each received membership fee into a multi-level marketing matrix." (page 3, lines 2-4). Applicant respectfully disagrees because the cited portions of Parker describe paying membership fees, but fail to describe a "multi-level marketing matrix" or "one of the incentives includes paying a portion of each received membership fee into a multi-level marketing matrix":

18. A method as recited in claim 1, wherein the members pay the membership fee to a credit card company.

19. A method as recited in claim 18, wherein the credit card company pays an associated doctor for conducting a visit with a member of the organization.

[0016] The membership fee to the organization can be unsubsidized. This is in contrast to typical health insurance plans which have subsidized pricing structures. A subsidized pricing structure is one where patients typically pay the same price, regardless of their medical situation. For example, a person with a serious medical disorder requiring more medical costs than a healthy person nevertheless typically both pay the same health insurance premiums. Thus the people requiring more medical costs "balance out" the people requiring less medical costs. In contrast to a subsidized pricing structure, in an unsubsidized pricing structure one member of the organization who has been determined to require more medical costs can pay a higher cost than a member who generally requires less medical costs.

[0022] In addition, financial transactions involving the organization can be processed through a credit card company. The annual fee paid by each member can be paid via each member's credit card. The annual fee can automatically be charged to the member's account each year. The credit card company, in turn, can pay the full annual fee to the actual organization. Alternatively, the credit card company may choose to become affiliated with (or even own) the organization. In that case, the credit card company may keep part or all of the annual fee. Any remaining amount not kept by the credit card company may get paid to the actual organization itself.

[0023] Each associated doctor is compensated for each appointment with a member of the organization. Thus, if a member completes an appointment with an associated doctor, that doctor will receive compensation by the organization for the visit. The doctor can receive a credit or check from the credit card company for each visit, instead of receiving it from the organization itself. Receiving compensation by the credit card company directly may be preferred by the associated doctors, as they do not have to depend on the integrity of the organization itself to ensure payment for each visit is promptly received. Further, the compensation paid to the doctor can be set by the organization to be a universally fixed amount for each visit (plus associated medical costs such as lab tests, etc.) regardless of the circumstances. In the alternative, the compensation can vary according to time and/or effort the doctor spent on the particular visit.

(claims 18-19; paragraphs 16, 22-23) (emphasis added). Since Parker does not use the term "multi-level marketing matrix" or describe how a portion of the membership fee is paid to certain members in accordance with the multi-level marketing matrix, Parker cannot identically disclose each and every element recited in claims 24-26 and 28-30.

Applicant respectfully submits that the term "multi-level marketing" or MLM (including a MLM payment matrix) is a well known term that is not consistent with any meaning that can be construed from the disclosure of Parker. For example and without limiting the present invention, Wikipedia describes a MLM matrix plan as:

This type of plan is similar to a Uni-Level plan, except there is also a limited number of representatives who can be placed on the first level. Recruits beyond the maximum number of first level positions allowed are automatically placed in other downline (lower level) positions. Matrix plans often have a maximum width and depth. When all positions in a representative's downline matrix are filled (maximum width and depth is reached for all participants in a matrix), a new matrix may be started. Like Uni-Level plans, representatives in a matrix earn unlimited commissions on limited levels of volume with minimal sales quotas.

(http://en.wikipedia.org/wiki/Multi-level_marketing#Compensation_plans). Applicant respectfully submits that the Office Action's interpretation of the claims is inconsistent with the ordinary meaning of the terms "multi-level marketing network", "multi-level marketing matrix" and "incentives" when viewed in light of the specification.

As a result, applicant respectfully submits that ***Parker does not identically disclose*** "receiving a membership fee from one or more individuals to become members of the health care plan and participate via incentives within a member multi-level marketing network, wherein one of the incentives includes paying a portion of each received membership fee into a multi-level marketing matrix for future distribution to specified existing members in specified amounts all in accordance with the multi-level marketing matrix" as recited in claims 24-26.

Likewise, applicant respectfully submits that ***Parker does not identically disclose*** "obtaining information and a listing fee from one or more medical service/good providers that enter the health care plan and participate via incentives within a provider multi-level marketing network, wherein one of the incentives includes paying a portion of each received listing fee into a multi-level marketing matrix for future distribution to specified existing medical service/good providers in specified amounts all in accordance with the multi-level marketing matrix" as recited in claims 28-30.

Applicant respectfully submits that support for the amendments to claims 24-26 and 28-30 can be found at least in paragraphs [0064], [0066] and [0069] of the published patent application (2004/0039604).

2. Basic Listings and Premium Listings.

Applicant respectfully submits that Parker does not identically disclose "the medical service/good provider listing comprises basic listings and premium listings for the medical service/good providers" as recited in claims 24-26 and 28-30. More specifically, applicant respectfully submits that Parker's description of a "list of associated doctors" (paragraph 19) and "the doctors associated with the organization also agree to provide premium services to the members of the organization" (paragraph 18) does not identically disclose "the medical service/good provider listing comprises basic listings and premium listings for the medical service/good providers" as recited in claims 24-26 and 28-30.

3. Discount price lists.

Applicant respectfully submits that Parker does not identically disclose “providing a discount price list . . . to the members . . . , wherein the discount price list comprises published rates for the services/goods provided by each medical service/good provider within two or more geographic areas” as recited in claims 24-26 and 28-30. The cited portion of Parker (Office Action, page 3, lines 10-14) states:

1. A method of providing preferred patient services, comprising:

associating a plurality of doctors in various locations with an organization, the associated doctors being selected by the organization based on each doctor's respective credentials; and

charging a membership fee to allow a plurality of members to belong to the organization, the members being permitted to seek any number of visits with any of the associated doctors in any of the various locations,

wherein the organization does not provide health insurance, but provides additional medical care regardless of any health insurance a member may already possess.

(claim 1). Parker does not identically disclose a discount price list comprising published rates for the services/goods.

Moreover, applicant respectfully submits that Parker does not identically disclose “each member can only access the published rates for the geographic area associated with the member” as recited in claims 24-26 and 28-30. The cited portion of Parker (Office Action, page 3, lines 14-15) states:

11. A method as recited in claim 1, wherein a member can access a list of the selected doctors and identify a doctor in a particular location by using the Internet.

(claim 11). Parker does not identically disclose each member's access is restricted to a geographic area associated with the member.

Furthermore, applicant respectfully submits that Parker does not identically disclose “the discount price list regulates the cost of services/goods provided to the members by the medical service/good providers such that the members pay the published rate on the discount price list for the services/goods rendered by the medical service/good provider in full directly to the medical service/good provider at the time the services/goods are rendered to the members by the medical service/provider thereby providing direct, immediate and full payment to the medical service provider without any review by the health care plan or a third party” as recited in claims 24-26 and 28-30. Instead, Parker teaches that the organization compensates the doctor for the visit instead of the patient:

[0036] Patient 213 belongs to the organization 214 which includes paying a membership fee 215. If patient 213 visits doctor 212, patient 213 typically pays nothing to doctor 212 (except for costs not covered by the organization for example

medications, lab tests, etc.) The organization 214 compensates doctor 212 by paying him compensation for the visit.

(paragraph 36) (emphasis added). As a result, the teachings of Parker are contrary to the elements recited in claims 24-26 and 28-30, and Parker cannot identically disclose all the elements recited in claims 24-26 and 28-30.

For at least the reasons stated above, Parker ***does not identically disclose*** every element of the claimed invention. Accordingly, applicant respectfully submits that claims 24-26 and 28-30 are not anticipated by Parker and are, therefore, allowable under 35 U.S.C. § 102(e). Applicant respectfully requests that the rejection of claims 24-26 and 28-30 be withdrawn.

Claims 3-6, 9, 13 and 17-19

Applicant respectfully submits that claims 3-6, 9, 13 and 17-19 depend from claim 24 which is allowable for the reasons stated above, and further distinguish over the cited references. Claims 3-6, 9, 13 and 17-19 are, therefore, allowable under 35 U.S.C. § 102(e). Accordingly, applicant respectfully requests that any rejection of claims 3-6, 9, 13 and 17-19 be withdrawn.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 2, 7-8, 12, 14-16, 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Parker in view of Wizig (U.S. Patent No. 6,735,569). Applicant respectfully submits that claims 2-9, 12-26, and 28-30 are patentable over the cited references for at least the reasons described below.

Claims 24-26 and 28-30

Applicant respectfully submits that claims 24-26 and 28-30 are allowable under 35 U.S.C. § 102(a) because the Wizig does not cure the deficiencies of Parker as stated above in reference to the Section 102 rejections which are hereby incorporated by reference. As a result, applicant respectfully submits that Parker and Wizig, either alone or in combination, do not disclose, teach or suggest all of the elements recited in claims 24-26 and 28-30.

In addition, applicant respectfully submits that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to change the organization of Parker, which is preferably a credit card company, into a multi-level marketing company because such a modification would “change the principle of operation of the prior art invention being modified.” MPEP § 2143.01 (VI). As a result, “the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP § 2143.01 (VI).

Claims 2-9 and 12-23

Applicant respectfully submits that claims 2-9 and 12-23 depend from claim 24, which is allowable for the reasons stated above, and further distinguish over the cited references. Claims 2-9 and 12-23 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that any rejection of claims 2-9 and 12-23 be withdrawn.


Conclusion

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 2-9, 12-26, and 28-30 as amended, are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

Dated: January 24, 2011

Respectfully submitted,

CHALKER FLORES, LLP

By 

Daniel J. Chalker

Reg. No. 40,552

Tel.: (214) 866-0001

Fax: (214) 866-0010

2711 LBJ Frwy, Suite 1036

Dallas, Texas 75234